



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/662,783	09/12/2000	Richard A. Shimkets	15966-577 (CURA-77)	3145

30623 7590 06/24/2003

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.
ONE FINANCIAL CENTER
BOSTON, MA 02111

EXAMINER

JIANG, DONG

ART UNIT	PAPER NUMBER
----------	--------------

1646

DATE MAILED: 06/24/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/662,783

Applicant(s)

SHIMKETS ET AL.

Examiner

Dong Jiang

Art Unit

1646

-- The MAILING DATE of this communication appears on the cover sheet with the correspond nc addr ss --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,40 and 66-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,40 and 66-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED OFFICE ACTION

Applicant's amendment in paper No. 14, filed on 20 May 2003 is acknowledged and entered. Following the amendment, claims 1, 2 and 66 are amended, and claims 67 and 68 are added.

Currently, claims 1, 2, 40 and 66-68 are pending, and under consideration.

The finality of the rejection of the last Office action is withdrawn. New grounds of rejection are set forth below.

Withdrawal of Objections and Rejections:

All objections and rejections of claims 1, 2, 40 and 66 made in the last Office Action (paper No. 13) are withdrawn in view of applicant's amendment.

Rejections Over Prior Art:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 2, 40 and 66-68 are rejected under 35 U.S.C. 102(e) as being anticipated by Gilbert et al., US 6,495,668 B1.

Gilbert discloses a human growth factor polypeptide, zveg4 (SEQ ID NO:2), which amino acid sequence is 100% identical to SEQ ID NO:2 of the present application (see appended computer printout of sequence search result). Further, Gilbert teaches functional fragments of zveg4 such as the growth factor domain, dimers thereof, and a pharmaceutical composition thereof (column 9, lines 39-46, Table 1, and claims 1-6, 12 and 13), wherein said polypeptide fragment is from 113 to 138 amino acid residues in length and comprises amino acid residues 258-370 (claims 1, 6, 12 and 13). Thus, Gilbert teaches a set of 26 fragments

Art Unit: 1646

with N-terminus starting at position 233 (138 residues in length) to 258 (113 residues in length), as position 370 is the end of the C-terminus of the zveg4 molecule. As such, Gilbert's 26 fragments of zveg4 encompass SEQ ID NO:4 (residues 239-370 of SEQ ID NO:2), and the fragment having residues 247-370 of SEQ ID NO:2 of the present invention, and therefore, the reference anticipates the present claims 1, 2, 40 and 66-68. With respect to the functional limitation in the present claims, as it does not alter the nature of the product, therefore, the function is inherent to the polypeptides of Gilbert.

Conclusion:

No claim is allowed.

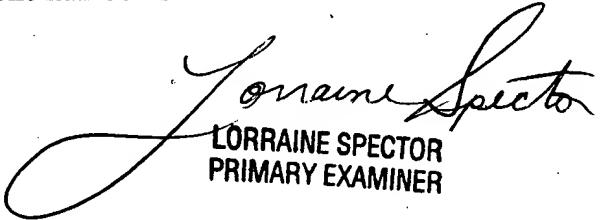
Art Unit: 1646

Advisory Information:

Any inquiry concerning this communication should be directed to Dong Jiang whose telephone number is 703-305-1345. The examiner can normally be reached on Monday - Friday from 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached on (703) 308-6564. The fax phone number for the organization where this application or proceeding is assigned is 703-308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.


LORRAINE SPECTOR
PRIMARY EXAMINER

Dong Jiang, Ph.D.
Patent Examiner
AU1646
6/14/03